

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code chapter 135.11, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 73, "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)," Iowa Administrative Code.

The purpose of the proposed amendment is to be consistent with federal changes to the requirements of the WIC food package that become effective October 1, 2009, and that will affect 74,500 Iowa WIC participants. The amendment also reserves the Department's right to limit the number of foods for the WIC-approved food list based on accessibility, availability, retail value of product, USDA recommendations, increased number of WIC participants, and change in appropriation of funds.

Any interested person may make written or oral suggestions or comments on the amendment on or before April 28, 2009. Comments should be directed to Julie McMahon, Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Fourth Floor, Des Moines, Iowa 50319-0075; telephone (515)281-3104; or fax (515)281-4913.

There will also be a public hearing on April 28, 2009, from 9 to 10 a.m. utilizing the Iowa Communications Network (ICN). The hearing will be conducted from 15 sites. Please call (515)281-4919 to schedule a time to speak at the hearing and to confirm the availability of the requested site. The hearing will originate from the Iowa Communications Network (ICN) Room, Second Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, and will be accessible from the following ICN sites:

Iowa State University - 1
Lagomarcino Hall, Room N147
Corner of Knoll Road and Pamel Drive
Ames

Mississippi Bend Area Education Agency - 9
ICN Room
729 21st Street
Bettendorf

Cedar Falls Public Library
Second Floor Meeting Room
524 Parkade
Cedar Falls

Iowa School for the Deaf - 1
Careers Building, Second Floor ICN Room
3501 Harry Langdon Boulevard
Council Bluffs

Keystone Area Education Agency - 1
Room 2
2310 Chaney Road
Dubuque

Ft. Dodge Air National Guard
Room 100
1649 Nelson Avenue
Ft. Dodge

Iowa Valley Community College
Room 121
123 6th Avenue West
Grinnell

Hiawatha Public Library
Meeting Room
150 West Willman Street
Hiawatha

North Iowa Area Community College - 1
Room 106
500 College Drive
Mason City

Mount Pleasant Treatment Center
1200 East Washington
Mount Pleasant

Osceola Public Library
ICN Room
300 S. Filmore Street
Osceola

Great Prairie Area Education Agency - 1
2814 N. Court Street
Ottumwa

Northwest Area Education Agency - 12
Room 206
1520 Morningside Avenue
Sioux City

Iowa Lakes Community College
ICN Room
800 21st Street
Spirit Lake

This amendment is intended to implement Iowa Code section 135.11.

The following amendment is proposed.

Amend subrule 73.9(3) as follows:

73.9(3) *Criteria for approving products for inclusion in the WIC food package.*

- a. A product shall meet the federal regulations governing the WIC food package.
- b. Variety in the food package is encouraged to increase the likelihood of products being used ~~as well as~~ and to allow participants to exercise responsibility in shopping.
- c. Changes to the approved food list take effect on October 1 in years when new vendor contracts are signed. Inquiries from food companies about new and continuing products must be received prior to February 1 of the year vendor contracts expire to be guaranteed consideration. The state reserves the right to change the food list more frequently if necessary.
- d. Cereals shall meet federal guidelines for ~~sugar and iron~~ content and shall also meet the following conditions:
 - (1) They ~~shall be~~ are carried by current Iowa WIC ~~approved~~ vendors.
 - (2) The product form and marketing approach ~~shall be~~ are consistent with the promotion of good nutrition and education.
 - (3) If a group of cereals from one manufacturer have similar names and package designs and some do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants.
 - (4) Ready-to-eat cold cereals are ranked by the six major distributors to Iowa ~~WIC vendors~~ grocery retailers based on volume of total sales. Hot cereals are ranked in the same way. Multiple ~~varieties~~ container sizes of a single ~~brand~~ brand of cereal variety shall be considered as one ~~brand~~ brand variety for the purposes of constructing this ranking. The ~~state office~~ department compiles data from all distributors to develop

an overall ranking or ranked list. ~~The top 16 name brand cold cereals, the top 3 varieties of private label (store) brand cold cereals and the top 2 hot cereals that qualify are selected.~~ At least half of the cereals authorized on the WIC-approved food list must have whole grain as the primary ingredient by weight and must meet labeling requirements for making a health claim as a whole grain food with moderate fat content. The department reserves the right to limit the number of approved cereals for administrative efficiency.

(5) Product ~~shall have~~ has been available in retail grocery stores in Iowa for one year prior to the effective date of inclusion in the WIC-approved food list.

e. Juices shall meet the federal guidelines for vitamin C content and all of the following conditions:

(1) Juices ~~shall be~~ are 100 percent juice and contain no added sugar, sweeteners or artificial sweeteners.

(2) The brand ~~shall be~~ is carried by current Iowa WIC-approved vendors. Juices are ranked by the six major distributors to Iowa ~~WIC vendors~~ grocery retailers based on volume of total sales. ~~The top two name brands of each flavor of juice (e.g., tomato, orange, grapefruit, grape, apple, or blended) and form of juice (single strength or concentrated) that meet the selection criteria will be approved.~~ Any private-label (store) brands that meet the selection criteria will also be approved considered.

(3) The product form and marketing approach ~~shall be~~ are consistent with the promotion of good nutrition and education.

(4) If a group of juices from one manufacturer have similar names and package designs and some do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants. Single-strength and concentrated varieties of juice with the same brand name will be evaluated separately.

(5) Product ~~shall have~~ has been available in retail grocery stores in Iowa for one year prior to the effective date of inclusion in the WIC-approved food list.

(6) ~~Concentrated Fruit~~ juices must be single flavors of nonrefrigerated juice.

f. The following conditions apply to dairy products:

(1) To qualify, brands of whole, ~~low fat~~, reduced fat, or fat-free milk marketed in Iowa must contain or be fortified with vitamins A and D to meet the federal standards. The department reserves the right to disqualify brands ~~that significantly exceed the average price of other brands or which are marketed as providing additional health benefits~~ which have a retail value of 115 percent or higher than the state average for this product.

(2) Fluid milk with added bacterial cultures or enzymes, including but not limited to sweet acidophilus or lactose-reduced milk, may qualify. Brands are approved by the department on a case-by-case basis.

(3) All brands of natural cheese designated in the USDA WIC regulations qualify. The cheese shall have no added flavors (e.g., smoke flavoring, peppers, wine).

g. All brands of dried beans or peas are approved whether packaged or purchased in bulk; however, no mixes are allowed.

h. Any brand of peanut butter qualifies as long as it does not contain other ingredients such as jelly. Brands may be either refrigerated or nonrefrigerated.

i. Eggs shall be fresh, Grade A large ~~or smaller~~ chicken eggs. ~~Specialty eggs, including those with health or nutrition claims and significantly higher prices,~~ Eggs which have a retail value of 115 percent or higher than the state average for this product shall not be approved.

j. Any brand of tuna or salmon qualifies if it is either water- or oil-packed, in cans or pouches, chunked, solid, or flaked, ~~and is in six ounce minimum size containers.~~ Tuna Fish packaged with other items such as crackers, ~~or relish~~ or other flavorings may not be purchased. Albacore tuna is not allowed.

k. Commercial infant formula shall meet the following conditions:

(1) It ~~shall have~~ is registered with the Food and Drug Administration as complying with the legal definition of infant formula.

(2) It ~~shall comply~~ complies with the calorie and iron content prescribed by the federal WIC regulations.

(3) It ~~has been~~ is approved by the USDA for use in the WIC program.

(4) The product form and marketing approach ~~shall be~~ are consistent with the promotion of good nutrition and education.

(5) All of the formula marketed under ~~that one~~ label shall meet all standards. If a similar, nonqualifying formula is marketed along with a qualifying formula, participants may be easily confused. Therefore, the qualifying formula shall not be approved.

~~(6) "Special formulas," as described in the regulations, must be approved by the USDA.~~

l. At least two whole grain options that meet federal guidelines will be provided.

m. Infant food fruits, vegetables and meats must meet the federal guidelines.

n. Fresh, frozen, and canned vegetables and fruits that meet federal guidelines will be available for purchase with cash value vouchers specifically for fruits and vegetables.

o. Soy beverages shall meet federal guidelines.

p. Products will be evaluated for use in the Iowa WIC program based on nutrient content, packaging, container size, labeling, availability to wholesale distributors, cost and participant preference. The state reserves the right to limit the number of foods for the WIC-approved food list based on accessibility, availability, retail value of product, USDA recommendations, increased number of WIC participants, changes in appropriation of funds and administrative efficiency.

~~q.~~ q. In addition to the criteria specified above, the department reserves the right to further restrict the number of brands of any products in order to contain the cost of the food package through competitive procurement of rebate contracts or other similar means.

r. The department reserves the right to discontinue specific brand names and products if the cost is 115 percent or higher than the state average for that particular product.